No. 12,872

IN THE

United States Court of Appeals

For the Ninth Circuit

GEORGE VAARA, ANTHONY ZORICH, RALPH J. RIVERS, as the Employment Security Commission of Alaska, and R. E. SHELDON, Director and Chief Executive Thereof,

Appellants,

vs.

NEW ENGLAND FISH COMPANY, a Corporation, and WARDS COVE PACKING COMPANY, a Corporation, for Themselves and All Others Similarly Situated,

Appellees.

Upon Appeal from the District Court for the Territory of Alaska, Division Number One.

BRIEF FOR APPELLEES.

FAULKNER, BANFIELD & BOOCHEVER,
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Juneau, Alaska,
Attorneys for Appellees.

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JURISDICTION.

This is a suit brought for a mandatory injunction directed to the defendants as the Employment Security Commission of Alaska and the Director and Chief Executive thereof, for the purpose of command-

ing them to compute and assign to plaintiffs and all others similarly situated certain credits due them under the provisions of Chapter 74, Session Laws of Alaska 1947 (Section 51-5-5 ACLA 1949), and to permit plaintiffs and all others similarly situated to reduce the amount of cash contributions otherwise required to be paid to the defendants-appellants for the credit year beginning July 1, 1950, and ending June 30, 1951. The case was consolidated with another suit in the nature of a petition for review of a decision of the Employment Security Commission of Alaska. The jurisdiction of the District Court was invoked under the Act of June 6, 1900, Chapter 786, Section 4; 31 Stat. 322 as amended; 48 U.S.C.A. Section 101. The jurisdiction of this Court rests on Section 1291 of the new Federal Judicial Code.

STATEMENT.

In this case the plaintiffs in the lower Court filed a complaint for injunctive relief (R. 3-10), and they also filed petition for review of decision of the Employment Security Commission of Alaska (R. 22 to 52). The answers were filed by defendants to both the complaint and the petition (R. 54 to 67). These two causes were numbered 6356-A and 6377-A, and since the issue was the same in both cases, the Court ordered them to be consolidated for hearing (R. 69-70). The case involves an interpretation of certain language contained in the Alaska Employment Security Law, which is found in Chapter 5, Title 51,

Sections 51-5-1 to 51-5-20 ACLA 1949 inclusive, and the amendment to 51-5-20, which is contained in Chapter 53 SLA 1949. This law of 1949, however, simply changed the name of the Commission from Unemployment Compensation Commission of Alaska to Employment Security Commission of Alaska. That part of the law which is involved in this case is found in Section 51-5-5 ACLA 1949, and particularly in that portion thereof found in Subsection (G) defining surplus. The issue is simple, and there is nothing involved except an interpretation of the definition of surplus.

The Act of the legislature of 1947, Chapter 74, SLA 1947, which is found in Sections 51-5-5 and 51-5-6 ACLA 1949, sets up a system of experience rating credits such as those in existence in nearly every state in the Union. Before the enactment of the experience rating credit law of 1947 the employers in Alaska paid into the Unemployment Compensation Fund 2.7% of their payrolls and under the Federal Social Security Law they paid .3% to the Federal Government, making a total of 3%. The amendment of 1947 setting up the experience rating system provides for certain credits to be given employers against this tax of 2.7%, and these credits are based on the employment experience of the employer, or in other words, the credits were set up on what is known as the payroll decline system. Employers are divided into six classes (see Section 51-5-5 ACLA 1949) and their credits against the payment of the full contributions are based upon their employment record. The

better the record or the more constant the payroll, the greater is the credit.

Credits are given only when there is a surplus in the Unemployment Trust Fund. March 15 of each calendar year is known as "cut-off date" and the surplus is defined in Paragraph (G), Subsections (1) and (2) Section 51-5-5 as follows:

> "(G) 'Surplus' means the lesser of:
>
> "(1) That amount by which the moneys in the Unemployment Compensation Trust Fund, as of the cut-off date, exceed four times the amount of contributions paid on or before the cut-off date with respect to the payrolls reported by all employers on or before said cut-off date for the preceding calendar year, or
>
> "(2) an amount equal to sixty per cent (60%) of the contributions so paid for the preceding calendar year. No portion of the surplus shall be credited to any employer unless the amount of the surplus is at least ten per cent (10%) of the amount of the contributions paid on the payrolls reported by all employers on or before the cut-off date for the preceding calendar year."

Following this portion of the Act is the formula for the establishment of credits.

It will be seen then that there would be available for credits during the credit year beginning July 1, 1950, either

(a) the amount by which the moneys in the Unemployment Compensation Trust Fund on March 15,

1950, exceeded four times the amount of contributions paid during the calendar year 1949; or

(b) an amount equal to 60% of the contributions so paid for the calendar year 1949.

The amount of the credits to be computed and assigned to employers would be the lesser of these two amounts. The Commission in determining whether credits were to be assigned or whether any credits were available, instead of multiplying by four the amount of contributions paid during the calendar year 1949, multiplied by four the contributions paid plus the credits which had been given to employers during the calendar year 1949. The plaintiffs in the lower Court, the appellees here, contended that the credits given employers in 1949 should not have been included in computing the surplus for the year beginning July 1, 1950, and if they had not been included, there would have been a surplus available for credits during the credit year beginning July 1, 1950. The appellees applied to the Commission to change its interpretation and to assign the credits to employers based on a computation of the surplus at four times the amount of contributions actually paid to the Trust Fund in the calendar year 1949 without taking into consideration any credits given employers during that calendar year. The Commission declined, and, after all steps had been taken by plaintiffs to exhaust such administrative remedies as are provided, the petition for review was filed in the District Court, Cause No. 6377-A (R. 11 to 52) and this was consoli-

dated with the complaint for injunction (R. 69-70). The District Court in its opinion found that the Commission was in error in including the credits for the year 1949 in the sum which it multiplied by four in order to arrive at the surplus available for credits, and it held that the amount to be multiplied by four should have been only the contributions paid during the calendar year 1949 (R. 70 to 75). Findings of Fact and Conclusions of Law were entered on January 18, 1951 (R. 76 to 84), and Judgment and Decree, based on the Findings and Conclusions, was entered on the same day (R. 85 to 87), and the Court enjoined the Commission from collecting from the plaintiffs and all others similarly situated contributions required to be paid for the credit year beginning July 1, 1950, in excess of 2.7% of their payrolls, less the credits provided to be allowed employers under the provisions of Section 51-5-5 ACLA 1949, and ordered the Commission to recompute the credits due in accordance with the Court's Findings, and to assign them to employers to be used during the current credit year.

It was admitted by defendants-appellants and found by the Court that the amount in the Trust Fund as of March 15, 1950, the cut-off date, was $9,397,-006.93, and that the amount of contributions actually paid by employers during the calendar year 1949 was $1,370,519.14. The Court found that by multiplying this sum, $1,370,519.14, by four, the result is $5,482,-076.56, and there was a surplus available for credits during the credit year 1950 of $3,914,930.36 (R. 80),

or the difference between $5,482,076.56 and $9,397,-006.93. However, under the provisions of Subdivision (G) Section 51-5-5 ACLA 1949, the portion of this surplus which could be assigned for credits was limited to 60% of $1,370,519.14, or a total of $822,311.48 (Finding No. XII, R. 82). The Decree ordered the Commission to compute and assign credits to that extent to all employers in accordance with their respective classifications (R. 87).

It might be mentioned that before the Judgment was entered, employers had continued to pay into the fund their full contributions at the rate of 2.7% without having received any credits, and they have continued to do that for two reasons: first, because they had no means of knowing their individual credits, which must be computed by the Commission; and second, the Court on March 14, 1951, entered an order impounding all funds coming into the hands of the Commission pending the appeal, and it ordered all employers to continue to pay into the fund at the full rate of 2.7% until the case is disposed of by this Court. This matter of impounding the funds pending appeal was before this Court on April 2, 1951, on the motion of appellants for leave to prosecute the appeal without bond or without security to the plaintiffs and all others similarly situated.

ARGUMENT.

As we have said in our Statement, the issue in this case is simple. All facts involved are admitted in the pleadings and by stipulation. No questions are raised as to procedure. The sole question is one of law, and it is whether, in computing the surplus for the purpose of determining the amount of credits to be assigned to employers for the credit year beginning July 1, 1950, the appellants were in error when they included the credits with the contributions paid in 1949; added the two together and multiplied the result by four.

The original Unemployment Compensation law of Alaska is found in Chapter 37, Laws of Extraordinary Session, 1937. There have been several amendments at subsequent sessions of the legislature, including the amendment contained in Chapter 47, SLA 1947, setting up experience rating credits. These are all carried into the 1949 compilation and set forth in Chapter 5, Title 51 ACLA 1949, commencing with Section 51-5-1. This section defines "contributions" as follows:

> "As used in this Act, unless the context clearly requires otherwise * * * (d) 'contributions' means the money payments to the Alaska Unemployment Compensation fund required by this Act."

Credits are assignable each credit year, which begins on July 1, from the surplus in the fund, as it stands on March 15, the cut-off date, and these cred-

its are measured by the amount of the surplus. If there is no surplus, no credits are due. If the surplus exceeds four times the amount of contributions paid by all employers during the preceding calendar year, the excess, or 60% of all contributions paid, whichever is less, is to be the amount of credits assigned to all employers (Section 51-5-5 ACLA 1949 supra).

At the "cut-off date" for the credit year beginning July 1, 1950, there was in the fund $9,397,006.93. The total of contributions paid in 1949 was $1,370,519.14. If we multiply the latter sum by four, the result is $5,482,076.56. Therefore, we have a surplus of $9,397,006.93 less $5,482,076.56, or $3,914,930.37 (R. 79). Appellees contend that based on that surplus, credits should have been assigned equal to 60% of $1,370,519.14 or $822,311.48, and that was the order of the District Court in its Judgment.

Appellants say that the credits assigned or used during the calendar year 1949 amounted to $1,016,413.49. Adding that sum to the amount of contributions paid of $1,370,519.14, we get $2,386,932.63, and that is the sum appellants multiplied by four, obtaining a figure of $9,547,730.52, which exceeds the entire amount of $9,397,006.93 in the fund at the cut-off date. By that method the credits for the current credit year were omitted.

The figure which the law requires to be multiplied by four is "*contributions paid*" during the preceding calendar year. There is no ambiguity about that and no room for judicial interpretation. The same law

defines "contributions" as *"money payments"* to the fund. (Italics supplied.) That phrase is equally plain. Therefore, the law means that in computing surplus for the purpose of assigning credits, the Commission must multiply the money payments of the preceding year by four, and not the money payments plus the credits.

Credits are not in any sense contributions. They are not something the employer contributes, but something he receives. Actually, it is something which he has contributed in past years to build up the fund and a portion of which he is now receiving back because of his good employment record and steady payroll.

Furthermore, since that part of the law defining surplus refers three times to "contributions paid" for the preceding calendar year, the Commission was not given any discretion to add something else. Credits could not, by any stretch of the imagination, be considered as money payments. The plain meaning of the law is that employers who have more or less steady employment with a payroll that does not fluctuate or decline, are required to pay less into the fund than if the employer has a fluctuating payroll and is, therefore, responsible for periods of unemployment of his employees. His credit is based on the percentage of the decline in his payroll as worked out in the formula set forth in the law. It is not anything which he pays during the year. It is something which he receives.

It will be noted that the credit year and the calendar year are not the same, for the credit year extends from July 1 of one calendar year to June 30 of the next.

If the credits are to be added to the "contributions paid" for the calendar year, then what credits are they? They would necessarily have to be either the credits assigned on July 1 for use within part of two calendar years or else just those credits which were used during the calendar year involved. It would not do to use the credits assigned on July 1, for frequently these are not all used by all employers, as some employers cease business before the end of the credit year, and if they could be considered payments, they are not all used or paid within that calendar year.

On the other hand, if we use the credits actually applied during the calendar year in question, we are using credits, part of which had already been assigned the year before.

Therefore, if the Commission's theory is correct, it must deal in computing the surplus on that theory with two calendar years and not just with the "preceding calendar year" as provided by law.

If the legislature had intended to include credits in computing the surplus, it would surely have been credits actually applied and used during the preceding calendar year, part of which had been assigned before that calendar year began. That result could have been accomplished very simply by stating in

the law that the computation of the surplus for the purpose of assigning credits should be done by multiplying the total of all taxable payrolls for the preceding calendar year by 2.7%. What they said, however, was something entirely different when they used the words "contributions paid" * * * for the "preceding year".

The credits are simply a deduction from the amount which the employer would otherwise have to pay, and Subdivision (G) of Section 51-5-5 ACLA 1949 provides that these credits may be used only during the credit year for which they were assigned and only by the employer to whom they were assigned, except that when an employer sells his operating assets, the purchaser who succeeds him in business under certain circumstances may use the credits during the credit year. It would seem, therefore, to be highly absurd to consider these credits as "money payments". It will be observed that the law provides that an employer, to be qualified, must have been an employing unit and had employment for which remuneration was payable in each of the four consecutive calendar years immediately preceding the computation date (Subdivision (E) Section 51-5-5 ACLA 1949).

Even if by any possible construction a credit, as set up in this law, could be considered a contribution paid and a payment made in money, still it would be impossible to hold that this credit was paid during the preceding calendar year. It was something that was already there and which had been accumulating

over a period of many years, for in computing the credit the experience of the employer must be taken into consideration for three years, and he gets no credit unless he has been an employer for four years.

If the legislature had intended that the required surplus should be computed as four times the contributions paid during the preceding year plus the credits assigned for that year, based on the fund accumulated during prior years, it could have easily said so, but the definition of "contributions" as "money payments" stands unqualified in the law, and when the law was amended in 1947 to set up the experience rating credit system, not only did the legislature use the word "contributions", but it used the words "contributions paid" in prescribing the method of computing the required surplus.

A credit is not something paid during the preceding calendar year and it is not a payment at all. It is simply the application of a portion of the surplus in the Trust Fund. Theoretically, it was placed there by the employer and it belongs to the employer under the law in proportion to first, his employment experience rating and second, the total surplus. It is not something which the employer pays into the fund during the preceding calendar year. It is something which he already has. It has no relation to anything paid in money during the preceding calendar year.

We think the District Court completely disposed of appellants' contention in its opinion (R. 70-75) and particularly where the Court states:

"Indeed, it is inconceivable that the legislature left the language stand in the belief that 'contributions paid' and 'money payments' included credits, for in no sense could it be said that such credits are 'paid'. This is not a case of an unhappy choice of words of doubtful or vague meaning or the use of terms of art, but rather a case in which the meaning of the language used is clear and certain. Such an omission cannot be supplied by the Court under the guise of construction without encroaching upon the legislative function." (R. 74.)

ESTOPPEL.

In the third defense set up in appellants' answer, an estoppel is pleaded. Appellants contend that the method they used in computing the surplus for the purpose of credits for the year beginning July 1, 1950, was the method used by them in the year 1948 and 1949; that is to say, that in those years they based their credits on a computation of the surplus which included both credits and money payments for the preceding calendar year, and that in one of those years that method of computation resulted in giving the plaintiff New England Fish Company a little less credit, and the Wards Cove Packing Company slightly more, and that for the second credit year mentioned, both the plaintiffs' credit figures on the basis contended for by the plaintiffs-appellees would have been less.

Appellants' argument then is that since the plaintiffs and all others had accepted credits for the years 1948 and 1949 on the same basis as appellants are attempting to use for the year 1950-51, they are now estopped from questioning the method of computation.

However, the District Court in its opinion held that the doctrine of estoppel urged by defendants was not applicable (R. 75). The plaintiffs-appellees have no means of knowing the method of computation employed by the Commission in those two former years. The computation of credits is based on a rather complicated formula which takes into consideration not only the experience rating of the employer, but also the total of all contributions paid during the preceding calendar year. The employer has no notice of the method employed to arrive at his credit. The form of notice used simply gives the credit class of the employer, the class credit factor, the total wages and the amount of the credit.

The credits are simply assigned by the Commission on the form prepared by it, a sample of which is in the record as Defendants' Exhibit No. 1 (R. 132). The employer had no means of knowing the method employed in computation of the surplus. Furthermore, the fact that the Commission had used the wrong method in two previous years is no reason why they should continue to do so, and no estoppel is involved. The Commission is governed by the law and if they departed from its requirements in former

years and made a mistake in its application, that is no reason why they should continue to do so, whether it should be to the advantage or disadvantage of employers.

Appellants introduced at the trial Defendants' Exhibit C (R. 120). This is a hypothetical, or theoretical, computation based on constant contributions at the rate of 2½ million dollars per year. It is rather difficult to understand, but appellants tried to impress upon the lower Court that by following the strict language of the law for the computation of surplus and using cash contributions only as a basis of computation, there would be wide fluctuations in the fund. These fluctuations would apparently not be so great, for in the testimony of Robert Prather, the expert for the Commission, it is shown that the difference in the amount of credits issued for the year ended June 30, 1949, that is, the difference between the employer-contended method and the method actually used by the Commission, was only $6,603.70 (R. 124). However, we cannot see the applicability of this theory in following the simple language of the statute, for whether fluctuations occur or do not occur would not seem to make any difference where a limit has been placed upon the fund so that when it goes to a certain point, no further credits are assignable.

The theory of the experience rating credit provision of the law is that the legislature places in effect a limit on the Unemployment Compensation Trust Fund and provides that so long as the total amount

in the fund is not below that limit, credits may be assigned to employers in accordance with their experience rating. If the Commission used the wrong method in the two previous years, it might have in some instances assigned greater credits to some employers than should have been assigned, but it is also true that by using the correct method prescribed by law, the employers would receive smaller credits in the future. What the employers are contending for in this case is a correct application of the law, and they ask that the plain and simple language of the statute be applied, regardless of what was done in the past. If a mistake was made, it was done by the Commission, and regardless of that, we are entitled to have the correct credit applied for the current credit year and in the future.

If the law requires a certain thing to be done in a certain way, the fact that it was done in some other way in the past, contrary to law, by one party and accepted by the other party, even if he had full knowledge of it, would not at all justify a continuance of the wrongful application of the law. The doctrine of estoppel has never been applied in such a case.

Appellants, in their brief cite the following cases dealing with estoppel:

Hartwell Mills v. Rose, 61 Fed. (2d) 441;
Hurley v. Commission, 257 U.S. 223;
Ashwander v. Tennessee etc., 297 U.S. 288;
Houston Prod. Co. v. U.S., 4 Fed. Supp. 716.

These cases are not applicable here and do not support the contention of appellant that estoppel applies under the circumstances of this action.

The general rule applicable would seem to be that found in *C.J.S.* vol. 31, page 275, sub. (b) section 72, which reads:

> "It is essential to an equitable estoppel that the person asserting the estoppel shall have done or omitted some act or changed his position in reliance upon the representations or conduct of the person sought to be estopped. A change of position which will fulfill this element of estoppel must be actual, substantial and justified."

None of these elements are present in this case. Here there was no knowledge on the part of appellees as to the method used in computing credits in 1948 and 1949. It was in April, 1950, that appellants notified all employers that no credits would be available for the credit year beginning July 1, 1950. This was done by a bulletin and order (Finding No. VI, R. 79). It was then that appellees were first put on sufficient notice to inquire as to the method being used to compute surplus.

All the cases cited by appellants deal with estoppel as affecting a single transaction. Here each credit year stands by itself and we are dealing with the credit year beginning July 1st, 1950. The position taken by the appellants is that because they made a mistake in 1948 and 1949 they must make another one in 1950 and all future years. What was done by

appellants in 1948 and 1949 has no bearing in 1950 which is a separate year. We are now dealing with 1950 and future credit years and it may well be that if the cash contributions for 1950 are sufficiently large the amount of the credits for the credit year beginning July 1st, 1951, will be smaller under our interpretation of the law than under the appellants' interpretation.

None of the elements of estoppel are present in this case. The appellee knew nothing of the basis of appellants' method of computation in 1948 and 1949; they did not induce the appellants to do anything; they were not induced to change their position in any respect much less to change it and do something they would not have done except for the acts or conduct of appellees.

THE NEW YORK LAW.

There are no Court decisions on the point involved in this case for the reason that the Alaska law is quite different from the law of any other state with respect to a definition of "contributions" and the definition of "surplus", except perhaps the Washington law. The law of that state, however, has recently been amended so as to provide that in computing surplus the Commission shall take into consideration and multiply by four not only the cash contributions for the previous year, but the credits given during the previous year.

In the record we find a reference to the New York Act and defendants introduced Exhibit A (R. 111) which is Section 577(d) of the New York Act. Just what bearing this has on the case before the Court it is difficult to see, and apparently counsel was making reference to the New York Act to show how the surplus is safeguarded by the terms of the law of that state. However, the Alaska law does the same thing and the legislature provided for protecting the surplus by ordaining that no credits should be issued to employers unless there was a certain amount of surplus in the Unemployment Trust Fund. When the surplus falls below a certain point, no further credits are given, so that the fund is fully protected.

Section 577(d) of the New York Act is the section dealing with the definition of surplus, and it reads as follows:

> "(d) 'Surplus' means that amount by which the moneys in the fund as of the effective date, after subtracting the amount of credits previously established under this section and outstanding as valid on such date, exceed the lesser of nine hundred million dollars or three and one-half times the amount of contributions payable on the payrolls reported by all employers on or before the effective date for the preceding completed calendar year, limited, however, to an amount not greater than sixty per centum of such contributions for such year."

This is quite different from the Alaska Act, for that law takes into consideration the credits pre-

viously established under Section 577. There is a great difference between the definition of "contributions" in the Alaska Act and in the New York Act. In the Alaska Act "contributions" is defined as "the money payments to the Alaska Unemployment Compensation Fund required by this Act". The definition of "contributions" in the New York law is found in Section 570, subdivision 1, which reads as follows:

> "§ 570. Payment of Contributions. 1. Rate. Each employer liable under this article shall pay regularly contributions in an amount equal to two and seven-tenths per centum of his payroll."

It will be seen, therefore, that not only is the definition of contributions different in the New York Act, but the definitions of surplus and the basis for the credits are different. The New York law, Section 570, defines "contributions" as a flat 2.7% of the payroll. Section 577, in defining "surplus", provides that in making the computation there shall first be subtracted the amount of credits previously established and outstanding as valid on the effective date, which is September 30, and then the amount which is multiplied by 3½ is the amount of "contributions payable on the payrolls reported by all employers on or before the effective date for the preceding completed calendar year, limited, however, to an amount not greater than sixty per centum of such contributions for such year."

The difference, then, is that not only does the New York law have a different definition of contributions, but the portion of it which deals with surplus instead

of using the term "contributions paid" as in the Alaska Act, uses the words "contributions payable", and the New York Act provides first for subtracting the amount of credits previously established. However, we do not know how the New York Act is administered, but apparently there has been no difficulty, for there seems to be no Court decisions involving a similar issue to the one in this case.

It is significant that counsel for the defendants stated to the trial court as follows, in answer to a question:

> "Mr. Dimond. Well, I think the testimony shows that the New York statute was studied in connection with the drafting of the Alaska law, and at least some of the Alaska law is very similar, and the thinking of the New York committee on the intent of its law should have the inference as to showing that the people who drafted the Alaska law were thinking along the same line, the fact that contributions have reference to the total, and I believe that is shown in the Joint Committee Report in 1945, and also the definition of surplus in the New York Statute itself."

It may well be that the legislature, in drafting the Alaska law, studied the New York law and many others, and the reports of committees making recommendations, but they drafted their own law and used their own language, and that is the language which is here for interpretation and not something which was omitted. It would seem that if the Alaska legislature had studied the New York law and the reports

of the legislative committees of that state and then drafted a different law, there would be no reason for going beyond that in seeking the intent of the Alaska legislature, although as stated in the trial Court's opinion, "the language employed leaves no room for construction because there is nothing to construe" (R. 73).

We have cited no authorities, for as stated hereinabove, we find no precedent for the interpretation of the Commission.

The word "contributions" is defined in the Act. We do not need even the authority of a dictionary. The method of computing the surplus is set forth in plain and simple language.

ADMINISTRATIVE INTERPRETATION.

We know that administrative interpretations, where permitted, are sometimes given considerable weight in the courts, but here, as the trial Court says, there was nothing to interpret. There are acts of Congress and of the legislatures, the administration of which are entrusted to boards and administrators, and in many cases these laws are of such character as to require certain rules, regulations, and sometimes interpretations. Such a law is the Wage-Hour Act, but interpretations of an administrator are never binding on the courts. (*Fleming v. A. H. Belo Corp.*, 121 Fed. (2d), p. 207.) There the Circuit Court of Appeals for the Fifth Circuit cites authorities dealing

with this question of the binding nature of an interpretation of an administrator and the following language is used:

> "For us to agree that such interpretations are binding on us would require us to entertain the view, the contrary of that uniformly taken both by Congress and the courts, that law as well as facts should be and has been delegated to the administrator."

This case was affirmed by the Supreme Court of the United States in *Walling v. A. H. Belo Corp.,* 316 U.S. 624.

The Employment Security law of Alaska does not give the Commission the power to make interpretations of the provisions of the Act. Section 51-5-11(e) gives the Commission the power to make rules, but these rules are simply rules for the enforcement or the administration of the Act in accordance with its terms and in the application of the language employed. Furthermore, such rules and regulations can be made only after thirty days' notice and no such rule is cited by appellants as authority for the interpretation they have placed upon the definition of surplus or for the definition they have adopted of the word "contributions" in the face of that expressed in the law itself.

Appellants can find no authority under any theory advanced by them which supports the right of the Commission or its director to make an "administrative interpretation", which results in a change of

meaning of a word in a statute which not only has a common and universally accepted meaning, but the definition of which is clearly set forth in the statute. Such "administrative interpretation" has probably never before been attempted, much less upheld by the courts.

CONCLUSION.

Appellants, in their brief, argue in effect that the spirit, purpose and intent of the legislature must prevail over the plain, simple, unambiguous and definite language of the statute. We do not think there is any merit in such argument. Statutes are not so interpreted by the courts for two reasons: *First*: the primary rule of construction is that

> "The intention of the legislature is to be obtained primarily from the language used in the statute. The court must impartially and without bias review the written words of the act, being aided in their interpretation by the canons of construction. Where the language of a statute is plain and unambiguous there is no occasion for construction even though other meanings could be found; and the court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it because of some supposed policy of the law, or because the legislature did not use proper words to ex-

taxpayer, or, at his option used as a credit against the tax for any future year; but it cannot be assigned or used as a medium of exchange.

Then appellants at page 15 of their brief state that obligations may be "paid" otherwise than in money under certain circumstances. It is true that poll taxes in some places, under some circumstances in former years were satisfied or offset by work on the roads, but they are not paid. They are satisfied or offset or cancelled.

Here the language is "money payments" and those payments cannot be offset or satisfied in any other manner than payment in money.

We respectfully urge that the opinion and judgment of the District Court, under the law and on the record, are eminently correct and that the judgment and decree should be affirmed.

Dated, Juneau, Alaska,
June 27, 1951.

Respectfully submitted,
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